held that one who while violating a speed ordinance injured another could not be convicted of assault and battery, since such an act being merely *malum prohibitum,* the criminal intent could not be implied. *Commonwealth* v. *Adams,* 114 Mass. 323, 19 Am. Rep. 362. The distinction between *malum prohibitum* and *malum in se,* though recognized by textwriters, is, it would seem, of little practical importance, as it is seldom if ever that an injury is sustained through the commission of an act merely *malum prohibitum* with no other concomitant element. See 1 BISHOP, NEW CRIMINAL LAW, 8 ed., § 333; see *Schultz* v. *State,* 89 Neb. 34, 130 N. W. 972. Where the element of negligence or carelessness is concurrent with the violation of the statute, the authorities uniformly hold a criminal intent to be implied. *Schultz* v. *State, supra.* "Inasmuch as recklessness or gross carelessness lies at the foundation of the charge against defendant, the fact that the act was done in violation of a city ordinance was proper evidence for the consideration of the jury on the question of negligence." See *Commonwealth* v. *Hawkins,* 157 Mass. 551, 32 N. E. 362; also, *Lane* v. *Atlantic Works,* 111 Mass. 136. The conclusion seems warranted that though the simple violation of a statute will not *ipso facto* supply the necessary criminal intent, it will furnish cogent proof of negligence and the resultant criminal responsibility.

CRIMINAL LAW—RAPE—KNOWLEDGE OF WOMAN'S MENTAL INCAPACITY.—The accused had sexual intercourse with a woman with her consent. The woman was of unsound mind but the accused did not know this fact. *Held,* accused is not guilty of rape. *State* v. *Schlichter* (Mo.), 173 S. W. 1072.

In all statutory rape cases the important question is the existence of facts bringing the act within the terms of the statute and not the knowledge of the guilty party of the facts. If the fact of insanity exists, that the defendant does not know of it is no defense. *People* v. *Griffin,* 117 Cal. 583, 49 Pac. 711, 59 Am. St. Rep. 216. An indictment was not defective for failure to state that accused had knowledge of the woman's insensibility caused by a drug administered to her. *Commonwealth* v. *Lowe,* 116 Ky. 335, 76 S. W. 119. The principal case follows a decision of its own State holding knowledge on the part of the accused is necessary. *State* v. *Warren,* 232 Mo. 185, 134 S. W. 522, 23 Ann. Cas. 1043. See, also, *Gore* v. *State,* 119 Ga. 418, 46 S. E. 671, 100 Am. St. Rep. 182. In statutory rape for having intercourse with a girl below the age of consent, it is uniformly held that it is rape though the accused believed her to be over the age. *Martin* v. *State* (Tex.), 165 S. W. 579. Even so where the girl told accused she was over the age. *Edens* v. *State* (Tex. Cr. R.), 43 S. W. 89. That the accused exercised ordinary diligence to ascertain her age and believed her over the age is no defense. *Manning* v. *State,* 43 Tex. Cr. Rep. 302, 65 S. W. 920. In all of these cases the accused commits an act which is *malum in se* and the intent to commit the crime is supplied, though accused did not know that the necessary facts existed. Just as in cases of fraud upon the woman, while she gives an apparent consent, yet there is no actual consent, as, where the woman thought the accused was her husband, he was guilty of rape. *State* v. *Williams,* 128 N. C. 573, 37 S. E. 952. Likewise where

the woman was asleep when the act was committed. *State* v. *Welch,* 191 Mo. 179, 89 S. W. 945. Also where the consent was obtained by means of a sham marriage, it was rape. *Lee* v. *State,* 44 Tex. Cr. Rep. 354, 72 S. W. 1005.

DIVORCE—RECRIMINATION—MISCONDUCT RESULT OF ACTS OF OTHER PARTY. —A husband, guilty of adultery, sued for a divorce for his wife's desertion. *Held,* though the statutory period of desertion had elapsed before the adultery was committed, and though the adultery was a result of the abandonment, the husband may not obtain a divorce. *Green* v. *Green* (Md.), 93 Atl. 400.

It was argued that the rights of the husband to a divorce had become vested by the lapse of the statutory period of desertion, and could not be divested by his subsequent misconduct. This position is clearly untenable; striking at the roots of the doctrine of recrimination. It has never been denied that adultery by the plaintiff is a valid defense to a suit charging the defendant with the same offense. If the principle contended for in this case were established, the right to a divorce would vest at the commission of the first act of adultery (for which there is of course no time limit) and the defense of recrimination would be unavailable.

Stress was also laid upon the alleged causal relation between the desertion and the husband's adultery; the act of the woman being the inciting cause, it was said, of the husband's offense. There are not many cases involving this precise point. If the misconduct of one party is actually the proximate cause of that of the other spouse, the latter's misconduct cannot be taken advantage of. So where a husband and wife separated by mutual consent, the wife being given only from £2 to £4 a month for her support, it was held that the husband's conduct was the proximate cause of acts of adultery committed by the wife, and the bill for divorce was dismissed. *Hawkins* v. *Hawkins,* 10 P. D. 177.

Where the wife was a drug fiend and companion of prostitutes, though not herself unchaste, and neglect and non-support on the husband shown, the husband's bill was dismissed, the court saying: "The party complaining has been instrumental in producing the causes leading to the separation." *Finley* v. *Finley,* 8 Ky. L. Rep. 605, 2 S. W. 554. In a recent New York case the point was made that the plaintiff's own conduct (abandonment) justified the adultery for which he sought a divorce, but the suggestion was expressly repudiated. *Mattison* v. *Mattison,* 60 Misc. 573, 113 N. Y. Supp. 1024.

Where the plaintiff was sentenced to life imprisonment, and his wife later committed adultery, he was held entitled to a divorce. *Abshire* v. *Hanks,* 119 La. 425, 44 South. 186.

It would seem that each case must be decided on its own facts; certainly the precedents do not constitute a rule of law that abandonment is an excuse for adultery. See 2 BISH., MARR. DIV. and SEP., §§ 212, 362.

INSURANCE—LIFE INSURANCE—SUICIDE OF THE INSURED.—The insured, in good faith, took out a life insurance policy containing no stipulations